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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN MARIANA ISLANDS**

LISA S. BLACK,	Plaintiff,)	Civil Case No. 05-0038
vs.)	MEMORANDUM IN SUPPORT OF
JIM BREWER, individually and in his)	DEFENDANT BREWER'S MOTION
official capacity as Acting Principal of)	FOR SUMMARY JUDGMENT
Hopwood Junior High School, CNMI)	
PUBLIC SCHOOL SYSTEM, and)	Hearing: Thursday, 7 December 2006
JOHN and/or JANE DOE,)	Time: 9:00 a.m.
	Defendants.)	Judge: Hon. Alex R. Munson
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**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

I. STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure requires that a motion for summary judgment be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986). After the moving party makes a properly supported motion, the responding party must present specific facts showing that contradiction of the moving party's presentation of evidence is possible. *See British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The mere existence of some alleged factual disputes between the parties will not defeat an otherwise proper motion for summary judgment. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L.Ed. 2d 202 (1986).

II. INTRODUCTION

Although reams of documents have been produced in this case, the issue before the court is very simple: Did the defendants act unlawfully when they decided not to renew an employment contract with plaintiff? If the answer to that question is negative, plaintiff cannot prevail on any claims advanced in her complaint and defendants are entitled to judgment as a matter of law.

For purposes of this motion, the following facts, advanced by plaintiff, must be assumed as true:

1. Plaintiff had a contract of employment with defendant. (Complaint, p. 4, lines 11 – 13.)

- 1 2. During the term of plaintiff's contract, "several members of the staff and faculty
2 participated in the drafting of a 'letter of concern' regarding the Vice-Principal."
3 (Complaint, p. 3, lines 16 – 21.)
- 4 3. The "letter of concern" was delivered to the administration of PSS on or about
5 October 6, 2004. (Complaint, p. 3, lines 23 – 25.)
- 6 4. Plaintiff did not participate in drafting, circulating or signing the letter. (Plaintiff's
7 Deposition Transcript, p. 67, lines 20 - 21; Complaint, p. 4, lines 1 – 2.)
- 8 5. Plaintiff alleges defendants did not renew her contract of employment because they
9 erroneously believed she was involved with the letter. (Complaint, p. 4, lines 1 – 13.)

11 In analyzing plaintiff's claims, the following provisions of law are relevant:

- 13 1. NMIAC § 60.3-158: Purpose. *No employee has a right to the renewal*
14 *of his or her contract of employment regardless of whether or not job*
15 *performance during the contract period is satisfactory.* The decision
16 whether to extend an offer for further employment is wholly within the
discretion of the Public School System. No tenure of any nature,
express or implied, is granted to any employee. (emphasis added)
- 17 2. NMIAC § 60.3-160: Renewal. No employee or office of the Public
18 School System is authorized to indicate, expressly or impliedly, that
19 any employee has a right to be renewed based upon his or her contract
or job performance.

21 Finally, plaintiff's employment contract provides:

22 CONTRACT TENURE: There are no tenured employment positions
23 offered by PSS. *This contract is only for the term stated in § 1 (c) and no*
right to renewal is granted, expressly or impliedly, by PSS to the Employee
24 regardless of whether job performance during the contract term is
satisfactory. An offer for continued employment is completely within the
25 discretion of PSS. (emphasis added)

26 Importantly, plaintiff does *not* allege she *actually* engaged in any protected speech, nor
27 that any person known to have participated in drafting or signing the "letter of concern"
28

1 experienced any negative employment consequences. It is also not disputed that plaintiff
 2 completed the term of the employment contract.

3 **III. PLAINTIFF CANNOT MAINTAIN A CLAIM FOR VIOLATION OF
 4 FIRST AMENDMENT RIGHTS TO FREE SPEECH BECAUSE SHE
 5 DENIES MAKING THE SPEECH IN QUESTION.**

6 For her first cause of action, plaintiff alleges defendant Brewer “formulated
 7 the erroneous belief that Ms. Black was responsible for drafting, circulating and/or encouraging
 8 others to sign” the letter of concern (Complaint, p. 4, lines 1 – 2), and “began to single out
 9 Ms. Black for disparate treatment” including selective enforcement of policies, intimidation,
 10 harassment and less-favorable evaluations. (Complaint, p. 4, lines 5 – 9)). The “retaliatory
 11 behavior culminated on April 25, 2005, when Ms. Black received notice that her contract
 12 of employment would not be renewed. (Complaint, p. 4, lines 11 – 12). Plaintiff alleges
 13 the failure of defendants to renew her contract violated free speech rights guaranteed
 14 by the First Amendment to the Constitution of the United States.

16
 17 Unfortunately for plaintiff, the rule in the Ninth Circuit is directly and expressly contrary
 18 to plaintiff's claim for relief. In *Wasson v. Sonoma County Junior College*, 203 F.3d 659
 19 (9th Cir. 2000) (*cert. denied* 531 U.S. 927, 121 S.Ct. 305, 148 L.Ed.2d 245), the Court of
 20 Appeals for the Ninth Circuit held that: (1) A public employee may not maintain a claim
 21 for wrongful retaliation for the exercise of First Amendment rights to free speech when she
 22 denies having made the speech in question; and (2) There can be no First Amendment
 23 retaliation claim when a public employee is falsely accused of making statements uttered
 24 by someone else. *Wasson, supra*, at 662, 663.

26
 27 The plaintiff in *Wasson* was a professor at a junior college who filed suit against the
 28 president and vice-president of the college district after they recommended to the governing

1 board that Wasson be terminated. An undisputed fact before the court was that “defendants
 2 sought to fire Wasson because they believed her to be the author of six publicly disseminated
 3 writings that vilified [the district president].” *Id.* at 661. Wasson denied authoring the writings.

4 In its ruling, the Ninth Circuit Court acknowledged the long line of cases precluding
 5 “retaliation by a public employer against an employee on the basis of certain instances of
 6 protected speech by the employee.” *Id.* at 662. Nonetheless, the Ninth Circuit Court affirmed
 7 the district court’s grant of summary judgment to defendants “because she cannot show the
 8 alleged wrongful conduct was in retaliation for any exercise of her free speech rights.” *Id.*
 9 at 662. Because the facts and issues in *Wasson* closely mirror the case before this Court,
 10 the reasoning of the Ninth Circuit Court is quoted at length:
 11

12 “This First Amendment case is unusual because Wasson asserts that
 13 the defendants retaliated against her for speech that she insists she did not
 14 make. Accepting Wasson’s allegations as true, she thus has not engaged in
 15 any relevant constitutionally protected speech. Yet, she claims that her free
 16 speech rights under the First Amendment were violated because the
 17 defendants falsely imputed to her the letters critical of [the district
 18 president].

19 “Several of our sister circuits have rejected claims identical to
 20 Wasson’s holding that **there can be no First Amendment cause of action**
 21 **where there was no speech by the plaintiff.** *See Jones v. Collins*, 132 F.3d
 22 1048, 1054 (5th Cir. 1998); *Fogarty v. Boles*, 121 F.3d 886, 890-91 (3rd Cir.
 23 1997); *Barkoo v. Melby*, 901 F.2d 613, 619 (7th Cir. 1990). This circuit,
 24 although never squarely addressing the issue in question, has recognized that
 25 a plaintiff must demonstrate that she has engaged in constitutionally
 26 protected expression to establish a First Amendment retaliation claim. *See*
Moran v. Washington, 147 F.3d 839, 846 (9th Cir. 1998) (citing *Board of*
County Comm’rs v. Umbehr, 518 US 668, 675, 116 S.Ct. 2342, 135 L.Ed.2d
 27 843 (1996)). **Having denied that she wrote the letters, Wasson**
undermines her claim that defendant’s conduct impermissibly chilled
her speech. “[A] free speech claim depends on speech, and there was
none in this case.” *Fogarty*, 121 F.3d at 890.

28 A First Amendment retaliation claim is not a wrongful termination
 29 claim. Rather, a First Amendment retaliation claim seeks to vindicate
 a public employee’s exercise of free speech rights when she has suffered

1 an adverse employment action in response to having spoken out publicly.
 2 **It cannot be used to remedy a case of mistaken identity.** In fact,
 3 the Supreme Court has “never held that it is a violation of the Constitution
 4 for a government employer to discharge an employee based on substantively
 5 incorrect information.” *Waters v. Churchill*, 511 US 661, 679, 114 S.Ct.
 6 1878, 128 L.Ed.2d 686 (1994). Accordingly, **there can be no First
 7 Amendment claim when an employee is falsely accused of making
 8 statements uttered by someone else.** (emphasis added)

9
 10 *Wasson, supra*, at 662, 663.

11
 12 In this case, just as in *Wasson*, plaintiff specifically denies exercising free speech rights.
 13 Therefore, “she fails to state a First Amendment claim in these circumstances because she cannot
 14 show the alleged wrongful conduct was in retaliation for any exercise of her free speech rights.”
 15

16 *Wasson, supra*, at 661.

17 There are no triable issues of fact: Plaintiff alleges her contract was not renewed because
 18 her employer “erroneously perceived” she participated in the “letter of concern.” The Ninth
 19 Circuit Court of Appeals, in alignment with other Circuit Courts of Appeals, has expressly held
 20 that “there can be no First Amendment claim when an employee is falsely accused of making
 21 statements uttered by someone else.” *Wasson, supra*, at 663.

22 Defendants are entitled to judgment as a matter of law on plaintiff’s first claim for relief.

23
**IV. PLAINTIFF CANNOT MAINTAIN A CLAIM FOR WRONGFUL
 24 DISCHARGE IN VIOLATION OF PUBLIC POLICY UNDER THE FIRST
 25 AMENDMENT.**

26 For her second cause of action, plaintiff alleges the “actual and/or perceived exercise
 27 of [plaintiff’s] right to speak freely as guaranteed under both the United States and
 28 Commonwealth Constitutions was the reason her employment contract was not renewed.”
 (Complaint, p. 6, lines 26 – 28.) Plaintiff further alleges the non-renewal of her employment
 contract constituted wrongful termination in violation of a public policy favoring free expression.

1 Plaintiff's "facts" do not support a claim for wrongful termination. As stated by the Ninth
 2 Circuit Court of Appeals in *Wasson, supra*, at 663, "A First Amendment retaliation claim is not
 3 a wrongful termination claim." Moreover, there can be no claim for wrongful termination when
 4 an employee is not, in fact, "terminated."

5 **a. Because Plaintiff Was Not Terminated, She Cannot Maintain a
 6 Cause of Action For Wrongful Termination.**

7 The California Court of Appeals has expressly ruled that no cause of action exists for
 8 tortious non-renewal of a non-tenured teacher's employment contract in violation of public
 9 policy. *Motevalli v. Los Angeles Unified School District*, 122 Cal.App.4th 97, 18 Cal. Rptr. 3d
 10 562 (2004).

11 In *Motevalli, supra*, the plaintiff was a public school teacher who had been hired under a
 12 one-year contract. During the term of the contract, Motevalli refused to cooperate with the school
 13 policy on random weapon searches. Motevalli completed the contract term, but her contract was
 14 not renewed for the next school year. Montevalli sued, claiming, *inter alia*, the nonrenewal of
 15 her employment contract constituted wrongful termination in violation of public policy, and a
 16 violation of her free speech rights under the California Constitution.

17 It is important to note that in *Motevalli, supra*, unlike the case before this court, the
 18 plaintiff had *actually engaged in speech*. Nonetheless, the Court of Appeals ruled against
 19 Motevalli in her claims for wrongful termination and for damages under the First Amendment to
 20 the State Constitution.

21 In a lengthy analysis of wrongful termination cases, the court noted that the "seminal
 22 case" of *Tameny v. Atlantic Richfield Co.*, 27 Cal.3d 167, 164 Cal.Rptr. 839, 610 P.2d 1330
 23 (1980), recognized "a cause of action in tort where an employee is wrongfully discharged in
 24 contravention of fundamental policy," (*Motevalli, supra*, at 571), but concluded that wrongful
 25 termination actions under *Tameny* are limited by *Daly v. Exxon Corp.*, 55 Cal.App.4th 39,
 26 63 Cal.Rptr.2d 727 (1997). As with *Wasson, supra*, because the reasoning of the court clarifies
 27 the legal principles at issue in this case, the opinion is quoted at length:

1 “In the instant case, the issue presented is whether the District’s
 2 nonrenewal of Motevalli’s employment contract constituted a sufficient
 3 adverse employment action for purposes of maintaining a *Tamency* claim.
 4 We agree with the trial court that *Daly v. Exxon Corp, supra* is dispositive.
 5

6 “*In Daly*, the plaintiff contended she had pled a *Tamency* claim for
 7 wrongful termination in violation of public policy. The reviewing court
 8 rejected the argument on the ground the plaintiff was not fired, discharged,
 9 or terminated.
 10

11 ‘The contract was for a one-year term Under a fixed-
 12 term contract, the employment is terminated by expiration
 13 of its appointed term. Had Exxon fired, discharged, or
 14 terminated Daly before the contract expired because she
 15 complained about unsafe working conditions, she could
 16 have sued for wrongful discharge in addition to statutory
 17 damages. However, the plaintiff could not sue for tort
 18 damages where the employment contract was for a fixed
 19 term and expired.’

20 **“Daly also noted the plaintiff’s use of the term ‘wrongful
 21 termination’ was a misnomer in that there was no termination, only a
 22 nonrenewal of the employment contract.** Daly further held that the
 23 plaintiff was not entitled to leave to amend to allege a new cause of action
 24 for what she labels ‘tortious nonrenewal of the employment contract in
 25 violation of public policy.’ ‘We are unaware of any case, and [plaintiff]
 26 presents none, in which an employer was held liable in tort for refusing to
 27 renew an employment contract that had expired by its own terms.’

28 **“Daly is directly on point. The District did not terminate
 29 Motevalli – she was a probationary teacher ... whose contract was not
 30 renewed. Absent a termination, there is no cause of action for
 31 wrongful termination in violation of public policy.** Further, Motevalli
 32 was incapable of amending her complaint to allege a new cause of action
 33 for tortious nonrenewal of her employment contract in violation of public
 34 policy because no such cause of action is recognized. Accordingly, we
 35 uphold the trial court’s grant of summary adjudication on Motevalli’s
 36 *Tamency* [wrongful discharge in violation of public policy] claim.”
 37 (citations and internal quotations omitted, emphasis added.)

38 *Motevalli, supra*, at 571, 572.

39 For purposes of analyzing plaintiff’s wrongful termination cause of action in this case,
 40 *Daly* and *Motevalli* are directly on point. Plaintiff was not terminated—her contract simply
 41

1 expired. “Absent a termination, there is no cause of action for wrongful termination in violation
 2 of public policy.” *Motevalli, supra*, at 572.

3 **b. Even if a Cause of Action for Tortious Nonrenewal Existed, It Is Not
 4 Available When Plaintiff Denies Exercising First Amendment Rights.**

5 Even assuming a cause of action for “tortious nonrenewal of an employment contract in
 6 violation of public policy” exists, plaintiff cannot prevail on her claim because she denies
 7 exercising free speech rights. As the Ninth Circuit Court of Appeals held in *Wasson v. Sonoma*
 8 *County Junior College*, 203 F.2d 659 (9th Cir. 2000), *supra*, a public employee may not
 9 maintain a claim for wrongful retaliation for the exercise of free speech when she denies
 10 exercising those rights. *Wasson, supra*, at 662, 663.

12 Thus, plaintiff’s second cause of action fails both because: (a) the tort of wrongful
 13 termination is not available when an employment contract simply expires (*Motevalli*); (b) there
 14 is no tort based on tortious nonrenewal of an employment contract in violation of public policy
 15 (*Motevalli*); and (c) there is no First Amendment protection for speech the plaintiff denies
 16 making (*Wasson*). For these reasons, defendants are entitled to judgment as a matter of law.

18 **V. PLAINTIFF CANNOT MAINTAIN AN ACTION FOR DEPRIVATION OF
 19 DUE PROCESS BECAUSE SHE HAD NO PROPERTY INTEREST IN
 20 CONTINUED EMPLOYMENT.**

21 In her third cause of action, plaintiff contends that defendant’s decision not to renew her
 22 employment contract violated her rights to due process rights under Article 1, § 5 of the CNMI
 23 Constitution. Unfortunately for plaintiff, it is settled law in this jurisdiction that “only civil
 24 service employees have a property right to continued employment.” *Dyack v. Commonwealth*
 25 *of the Northern Mariana Islands*, 317 F.3d 1030, 1034 (9th Cir. 2003). Without a property
 26 interest in employment, plaintiff was not “due” any process.

28 In *Dyack, supra*, the plaintiff was a physician who had a two-year employment contract

1 with the CNMI. The contract provided that it could be terminated without cause upon sixty days
2 advance notice. Approximately six months after entering into the contract, Dyack received
3 notice that the contract was being terminated without cause. Dyack brought a lawsuit claiming
4 that termination of his contract without notice or a hearing violated his rights to due process.

5 The Ninth Circuit Court of Appeals held that Dyack was “excepted” from the civil
6 service scheme and, therefore, “did not have a constitutionally protected property interest in his
7 employment.” Because Dyack did not have a property interest in employment, “the district
8 court did not err in granting summary judgment to the defendants...” on the due process claim.

9 *Dyack, supra*, at 1037.

10 In this case, plaintiff’s claim to deprivation of due process is even less tenable: Dyack’s
11 contract was *actually terminated* during its term; this plaintiff’s contract was *not* terminated,
12 it simply expired as mutually agreed by the contracting parties. As stated by the courts
13 in *Motavalli* and *Daly, supra*, there is a distinction between termination of employment and
14 expiration of a contract.

15 Regardless of whether plaintiff may be able to argue she was protected by the civil
16 service system, once her contract of employment expired by its own terms, she had no rights
17 to due process based upon the bargained-for expiration of the contract term. *Motavalli, supra*.

18 Because plaintiff did not have a property interest in continued employment, and because
19 her contract was not terminated, but simply expired, she cannot prevail on a claim
20 of deprivation of due process rights. Plaintiffs are entitled to judgment as a matter of law.

1 **VI. PLAINTIFF CANNOT MAINTAIN A CAUSE OF ACTION FOR**
 2 **INVASION OF PRIVACY BECAUSE SHE HAS ALLEGED NO**
 3 **FACTS IN SUPPORT THEREOF.**

4 Plaintiff's third cause of action alleges defendants violated "her right of individual
 5 privacy." (Complaint, p.7, lines 13 – 16). Other than this single conclusory allegation of law,
 6 no fact set forth in Plaintiff's complaint suggests an invasion of privacy.

7 *Prosser and Keeton, Torts*, 851-66 (5th ed. 1984) identifies the four kinds of claims
 8 grouped under "privacy" torts as: (1) appropriation of the plaintiff's name or likeness; (2)
 9 unreasonable and offensive intrusion upon the seclusion of another; (3) public disclosure of
 10 private facts; and (4) publicity which places the plaintiff in a false light in the public eye.

11 Plaintiff has not alleged appropriation of her name or likeness, unreasonable or offensive
 12 intrusion upon her seclusion, public disclosure of private facts, or publicity which placed her in
 13 a false light in the public eye. Because plaintiff has made no allegation of fact to support a claim
 14 for invasion of privacy, defendants are entitled to judgment as a matter of law.

15 **VII. PLAINTIFF CANNOT MAINTAIN A CAUSE OF ACTION FOR**
 16 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS BECAUSE**
 17 **DEFENDANT'S CONDUCT WAS NOT "OUTRAGEOUS" AS A MATTER**
 18 **OF LAW.**

19 Plaintiff's cause of action for intentional infliction of emotional distress must fail as a
 20 matter of law because plaintiff has not set forth any facts from which it can be determined that
 21 defendant's conduct was "outrageous" or "exceeded all bounds tolerated in a civilized
 22 community." Without this showing, plaintiff's cause of action must fail.

23 "It is for the court to determine, in the first instance, whether the defendant's conduct
 24 may reasonably be regarded as so extreme and outrageous as to permit recovery." *Fowler v.*
 25 *Varian Associates, Inc.*, 196 Cal. App. 3d 34, 44, 241 Cal. Rptr. 539 (1987). "Because this
 26 factor requires inquiry into the appropriateness of a defendant's behavior, it is necessary

1 to examine the terms of the collective bargaining agreement. If permitted by the agreement,
 2 the conduct of the defendant which has been called into question might be deemed reasonable.”
 3 *Moreau v. San Diego Transit Corp.* 210 Cal.App.3d 614, 625, 258 Cal. Rptr. 647 (1989).

4 Although there is no “collective bargaining agreement” in the case before this court,
 5 the parties nonetheless had a written agreement (plaintiff’s employment contract), which
 6 specifically provided “no right to renewal is granted, expressly or impliedly.” Additionally,
 7 the relevant portions of the Education Code provide that “No employee has a right to the renewal
 8 of his or her contract of employment regardless of whether or not job performance during
 9 the contract period is satisfactory.” NMIAC § 60.3-158.

10 Because nonrenewal of the employment contract was specifically contemplated by both
 11 the contract and the relevant statutes, it cannot be said that defendant’s decision not to renew the
 12 contract was “outrageous” or “beyond all bounds tolerated in a civilized community.”

13 Furthermore, in response to Interrogatory No. 12 regarding plaintiff’s alleged “severe
 14 anxiety,” plaintiff states: “The anxiety and stress that her unemployment caused were “the
 15 typical sort” that a person would experience when faced with the prospect of having no means by
 16 which to support themselves.”

17 Plaintiff’s claim for intentional infliction of emotional distress must fail because plaintiff
 18 cannot establish the essential elements of the claim. Defendant alleges nothing more than
 19 nonrenewal of her contract -- an action that was specifically contemplated by the contract and
 20 permitted by the statutes. Moreover, plaintiff’s distress was “the typical sort” that anyone facing
 21 unemployment would experience. Taking the facts in the light most favorable to plaintiff, she
 22 cannot establish the requisite elements of a claim for intentional infliction of emotional distress.
 23 Accordingly, defendants are entitled to a judgment as a matter of law.

24

25 **VIII. PLAINTIFF CANNOT MAINTAIN A CAUSE OF ACTION FOR**
26 NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS BECAUSE
27 SHE HAS NOT SUFFERED SERIOUS EMOTIONAL DISTRESS.

28 Assuming, without conceding, that a claim for negligent infliction of emotional distress

exists under CNMI law, the general rule for recovery in California is that a cause of action for negligent infliction of emotional distress requires that a plaintiff demonstrate (1) serious emotional distress, (2) actual and proximate causation, (3) wrongful conduct by the defendant and (4) foreseeability. *Austin v. Terhune*, 367 F.3d 1167 (9th Cir. 2004). The claim is not an independent tort but simply a species of negligence. *Lawson v. Mgmt Activities, Inc.*, 69 Cal.App. 4th 652, 656 (4th Dist. 1999) (“[T]here is no such thing as the independent tort of negligent infliction of emotional distress. Accordingly, the elements of duty, breach, causation, and damages apply to a claim for negligent infliction of emotional distress. *Macy's California, Inc. v. Superior Court*, 41 Cal. App. 4th 744, 747 (1st Dist. 1995).

Even if plaintiff had alleged causation, wrongful conduct and foreseeability, her cause of action must fail because defendant does not claim the stress she experienced was “serious.” Rather, plaintiff admits that her stress was only “the typical sort” that anyone facing unemployment would experience (Plaintiff’s Response to Interrogatory No. 12).

Moreover, even if plaintiff were to establish that her distress was “serious,” her claim must still fail because she cannot, as a matter of law, establish that defendant’s conduct in not renewing her employment contract was “wrongful.” As stated by the court in *Motevalli v. Los Angeles Unified School District*, 18 Cal. Rptr. 3d 562, *supra*, no cause of action exists for tortious nonrenewal of an employment contract

Because plaintiff alleges that her emotional distress was only “the typical sort” and cannot, as a matter of law, establish “wrongful” conduct on the part of defendants, plaintiff cannot establish the requisite elements of her claim, defendants are entitled to a judgment as a matter of law on plaintiff’s cause of action for negligent infliction of emotional distress.

1 **IX. PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF CONTRACT IS**
 2 **BARRED BY THE STATUTE OF LIMITATIONS.**

3 Plaintiff claims that "several months after her arrival and the commencement of her
 4 employment" defendants breached the contact of employment entered into in 1996 by instituting
 5 new pay scales and ceasing the housing allowance. (Complaint, p. 9, lines 9 through 19).
 6 Assuming, for purposes of this motion only, that plaintiff is correct that the new pay scales and
 7 cessation of the housing allowance constituted a breach of the employment contract, the statute
 8 of limitations on this claim has long since passed.

9 The statute of limitations for contract claims in the CNMI is set forth in 7 CMC § 2502.
 10 This section requires a contract claim to be initiated within six years after the cause of action
 11 accrues.

12 If, as plaintiff alleges, the breach occurred "several months after" plaintiff's arrival in the
 13 CNMI, it must be assumed the alleged breach would necessarily have occurred in 1996 or 1997
 14 (or even 1998). That being so, plaintiff's right to bring a cause of action on the breach would
 15 have expired no later than 2004.

16 Because plaintiff's claim for breach of contract is barred by the statute of limitations,
 17 defendants are entitled to judgment as a matter of law.

18 **X. CONCLUSION**

19 Defendants are entitled to judgment as a matter of law on plaintiff's cause of action for:

20 1. Violation of First Amendment rights because there is no First Amendment cause of
 21 action where plaintiff denies participating in the speech in question. *Wasson v.*
 22 *Sonoma County Junior College*, 203 F.3d 659 (9th Cir. 2000).

23 2. Wrongful termination in violation of public policy because plaintiff was not
 24 terminated--her contract simply expired--and, absent termination, there can be no
 25
 26
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cause of action for wrongful termination. *Motevalli v. Los Angeles Unified School District*, 18 Cal. Rptr. 3d 562 (2004).

3. Deprivation of due process because plaintiff was a contracted, excepted service
4. employee, not a civil service employee and, accordingly, had no property interest in
5. continued employment. *Dyack v. Commonwealth of the Northern Mariana Islands*,
6. 317, F.3d 1030, 1034 (9th Cir. 2003). Moreover, it is undisputed that plaintiff
7. completed the term of her contract and was awarded notice, a hearing, and an appeal.
9. 4. Invasion of privacy because plaintiff has alleged no facts in support of her claim.
10. 5. Intentional infliction of emotional distress because defendant's conduct in nonrenewal
11. was contemplated by the contract and the statutes and, therefore is not "outrageous"
12. as a matter of law. *Moreau v. San Diego Transit Corp.* (1989) 210 Cal.App.3d 614,
13. 625, 258 Cal. Rptr. 647).
14. 6. Negligent infliction of emotional distress because plaintiff does not allege "serious"
15. distress and cannot establish wrongful conduct on the part of defendants.
16. 7. Breach of contract because the alleged breach is barred by the statute of limitations.

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19 THEREFORE, Defendants respectfully requests that the Court grants summary judgment
20 for defendants on all claims contained in Plaintiff's complaint.

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22 Respectfully submitted,

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24 OFFICE OF THE ATTORNEY GENERAL

25 Dated: 13 November 2006.

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27 /s/
28 GREGORY BAKA #F0199
Deputy Attorney General

Attorneys for Defendant Brewer